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To: Microsoft ATR
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Subject: Microsoft Judgement and Remedies

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Any remedy in the Microsoft judgment must restore competition to the marketplace. Microsoft's monopoly position and persistent anticompetitive behavior were issues that brought the case up in the first place, and normal market forces of competition would have prevented these problems. Restoring competition will balance the market and allow end users the choice that we value so highly in a free and open market.

An effective remedy must employ rigorous measures to correct the market imbalance and prevent future anticompetitive behavior from Microsoft. Their established patterns of violating consent decrees and continually testing how far they can step outside of the Court's orders indicate that Microsoft will continue to employ anticompetitive business practices for as long as they are capable. Past behavior and published internal documents from Microsoft support the suspicion that this corporation will continue to stifle competition to unlawfully maintain its monopoly position.

The most effective measure to restore competition to the marketplace is to break up Microsoft. This remedy proved highly effective in the cases of Standard Oil, the Bell System, and countless others. History has proved out that neither the petroleum nor the telecommunications business sectors suffered ill effect from breaking up Standard Oil and the Bell System. The facts show that both sectors flourished substantially after breaking up monopolies into smaller business units and restoring competition to these markets.

As the Bell System was broken up into "Baby Bell" telephone operating companies, and Standard Oil was broken up into smaller, competing petroleum companies, Microsoft should be broken up into an operating systems company, an applications software company, and an Internet services and communications company. This follows the successful pattern employed with the Bell System, where AT&T retained long distance telephone service, and local service was provided by a group of competing local Bell Operating Companies, the "Baby Bells."

To clarify matters, applications software is defined as computer software intended for specific tasks: word processing, database processing, graphic editing and rendering, audio/video/multimedia rendering, enterprise resource control and planning, local and wide area network administration, communication clients, Web browsers, utility functions such as encryption and data file management, and numerous other, similar functions. These applications all require an operating system to function.

An operating system is defined as the computer infrastructure required for the basic operation of the computer hardware and supporting applications software: data input/output, data storage, and other functions to allow hardware to communicate. Operating systems carry out general tasks necessary to support the computer system and make it useful, leaving specific tasks to applications software that can be added and removed by the end user without degrading the operating system.

Internet services and communication are remote location services accessed via the Internet or similar telecommunications means. These services include, but are not limited to, information, telecommunications via text (e-mail), voice, and/or video images, access to the World Wide Web, business transactions (e-business, e-trade), and similar wide area communications.

Breaking up Microsoft in such a fashion puts the company on a more equal footing with competing firms in the computer software and Internet communications service industries. Breaking the operating system monopoly away from the applications software business unit will prevent further occurrences of unlawful and anticompetitive software bundling, an issue that brought this dispute into court in the first place. Making all the participants in the applications software market equal will foster competition and innovation, as shown by the telecommunications boom that occurred after the Bell System breakup.

The Bell System precedent illustrates that end users will not suffer any loss

from breaking up Microsoft. In fact, the end users will likely be the biggest beneficiaries as competition encourages innovation, reduced costs, and improved quality. This was the case with the Bell System breakup. An adequate and competent monopoly was broken up to pave the way for substantial innovation and excellence in that business sector. End users currently pay less for more and better telecommunications service in a competitive market. The same benefit will come from breaking up Microsoft.

In the event that the Court chooses not to break up Microsoft, the following remedies are suggested as alternative means to achieve a restoration of competition in the computer software and data communications market:

Regulate Microsoft and the MS-Windows operating systems as a public utility, much the same as electric and water utilities. This will require additional government infrastructure to administer. Such regulation would have to remain in effect as long as Microsoft holds a monopoly. The political overhead of establishing and operating a regulatory agency may be unwieldy, and this will likely require action from Congress to establish and fund such regulatory activity.

Prohibit exclusivity clauses in operating system software licenses. Microsoft's practice of requiring hardware vendors to exclude other operating systems as a condition for purchasing MS-Windows only perpetuates Microsoft's monopoly position. End users should have a choice of operating system software, to include double and multiple boot options to use more than one operating system on the same computer. A healthy and competitive marketplace allows end users to select which operating system(s) they want, rather than having vendors dictate to customers what they will use. Consumers must be free to decline pre-loaded copies of the MS-Windows operating systems and return unused operating system software for a refund. Computer hardware manufacturers and distributors must be free to load any operating system(s) that they and their paying customers choose into computer hardware. Current business practice has the operating system tied to the hardware by a monopoly (Microsoft), leaving purchasers obliged to pay for software that they may not want and cannot return for credit. Microsoft has abused its monopoly position to bar potential competitors from the market, using business practices not too far removed from those of the Standard Oil monopoly in its day.

Another alternative or adjunct to breaking up Microsoft into three companies would be to make the MS-Windows family of operating systems public domain, and Microsoft would have to agree to leave the proprietary operating system market in order to prevent re-establishing a monopoly. This action would effectively dissolve the monopoly that has been at the heart of this case. This action must be voluntary on Microsoft's part, because it could be construed as a taking by the government, rather than the remedy in a lawsuit. Microsoft's violation of antitrust law must not be parlayed into an occasion to collect taxpayer dollars, should Microsoft give up proprietary ownership of the MS-Windows family of operating systems.

A public domain Windows operating system can be standardized and administered by nonprofit industrial standards governing organizations, much the same way as World Wide Web domain names and related administrative Internet infrastructure is maintained by the user community. Such a move would place the Windows operating systems in a position analogous to industry standards that serve the general public as a whole.

The overriding concern is that whatever remedy the Court imposes on the Microsoft case, it must restore competition to the market. The best solutions are those that allow natural market forces to prevail, rather than increased governmental oversight and regulation that diverts taxpayer dollars from more pressing issues. Like Standard Oil, Microsoft has persistently and continually employed unlawful practices to maintain a monopoly, and only the most rigorous measures will be effective at correcting the situation.

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